

(c) Alcohol testing is authorized by this section only if the observations required by paragraph (b) of this section are made during, just preceding, or just after the period of the work day that the covered employee is required to be in compliance with this part. An employer may direct a covered employee to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(d)(1) If a test required by this section is not administered within two hours following the determination under paragraph (b) of this section, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the determination under paragraph (b) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) For the years stated in this paragraph, the employer shall submit to the FTA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that could not be completed within 8 hours shall be submitted to the FTA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- (i) Type of test (reasonable suspicion/post-accident);
- (ii) Triggering event (including date, time, and location);
- (iii) Employee category (do *not* include employee name or other identifying information);
- (iv) Reason(s) test could not be completed within 8 hours; and
- (v) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

(3) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, an employer shall not permit a covered employee to report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an employer permit the covered employee to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02 percent; or

(ii) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination under paragraph (b) of this section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this part.

(4) Except as provided in paragraph (d)(2), no employer shall take any action under this part against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an employer with the authority independent of this part from taking any action otherwise consistent with law.

[59 FR 7549, Feb. 15, 1994, as amended at 59 FR 62240, Dec. 2, 1994]

#### **§ 654.39 Return to duty testing.**

Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02. (See § 654.75)

#### **§ 654.41 Follow-up testing.**

(a) Follow-up testing shall be conducted when the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(b) Following a determination under § 654.75(b) that a covered employee is in

need of assistance in resolving problems associated with alcohol misuse, each employer shall ensure that the employee is subject to unannounced follow-up testing as directed by a substance abuse professional in accordance with the provisions of § 654.75(c)(2)(ii).

**§ 654.43 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.**

Each employer shall retest a covered employee to ensure compliance with the provisions of § 654.65, if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

**§ 654.45 Supervisor acting as breath alcohol technician.**

An employer shall not permit a direct supervisor of an employee to serve as the breath alcohol technician for an alcohol test of the employee.

[60 FR 12300, Mar. 6, 1995]

**Subpart D—Administrative Requirements**

**§ 654.51 Retention of records.**

(a) *General requirement.* Each employer shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, and employee evaluation and referrals shall be maintained for a minimum of five years. Each employer shall maintain a copy of its annual MIS report(s) for a minimum of five years.

(2) *Two years.* Records related to the collection process (except calibration of EBT's) and training shall be maintained for a minimum of two years.

(3) *One year.* Records of all test results less than 0.02 shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained.

(1) Records related to the collection process:

- (i) Collection logbooks, if used.
- (ii) Documents relating to the random selection process.
- (iii) Calibration documentation for evidential breath testing devices.
- (iv) Documentation of breath alcohol technician training.
- (v) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.
- (vi) Documents generated in connection with decisions on post-accident tests.
- (vii) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(2) Records related to test results:

- (i) The employer's copy of the alcohol test form, including the results of the test.

- (ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this part.

- (iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

- (i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

- (ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

- (5) Copies of annual MIS reports submitted to FTA.

- (6) Records related to education and training:

- (i) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.

- (ii) Documentation of compliance with the requirements of § 654.71 of this part.

- (iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a